

- (1) On what date did claimant suffer accidental injury arising out of and in the course of her employment with respondent?
- (2) Did claimant provide timely notice of this accident or accidents?

- (3) Did claimant submit timely written claim for her injury?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**FINDINGS OF FACT**

Claimant began working for respondent as a telephone sales representative in September 1994. Her activities at work involved dialing a telephone and inputting information into the computer. The telephone claimant used was a typical push-button telephone. In 1995, claimant began developing problems in her hands, wrists, and especially the thumb and middle fingers of both hands as a result of her telephone and keyboarding activities. Claimant reported these symptoms to her employer and was authorized to seek treatment. She was referred by the personnel office to Dr. R. L. Wilson for medical care. Dr. Wilson filled out a form entitled "MCI Business Services, Workers Compensation Form" which was returned to the respondent. Respondent also filled out a first report of accident for their own records regarding claimant's injury.

After being examined by Dr. Wilson, claimant provided Dr. Wilson's restrictions to respondent. Even though she had a follow up appointment with Dr. Wilson, claimant elected not to pursue additional medical treatment at that time.

Claimant did, on several occasions, advise her supervisors, Kelli Lindsey and Sara Shupeck, of the pain and difficulties she was having with her hands. She did not identify exactly when these conversations took place. However, her testimony that they did take place is uncontroverted.

Claimant continued working for respondent until December 19, 1996, at which time she voluntarily terminated her employment. At that time, she already had a job with First Data Corporation, a credit card service, which paid a wage comparable to that which claimant earned with respondent. The parties acknowledge, as claimant is earning a comparable wage, the award in this matter would be limited to claimant's functional impairment only.

Claimant sought no additional medical treatment until approximately April 1, 1997, at which time she went to her personal physician, Dr. Joseph M. Sack. Claimant also contacted her attorney and they submitted a written claim on or about April 18, 1997. In addition, the Kansas Workers Compensation form E-1, Application for Hearing, was filed with the Division of Workers Compensation on April 21, 1997.

Claimant advised Dr. Sack of the work injuries to her hands. She further advised that she worked out with free weights on a regular basis. Dr. Sack diagnosed tendinitis in claimant's wrists and possible arthralgias of the thumb, index and middle fingers of both

hands. Dr. Sack treated claimant with pain killers and anti-inflammatories. Claimant was also diagnosed with possible bilateral carpal tunnel syndrome, showing some evidence of possible thickening of the tenosynovium of the dorsal and volar wrists bilaterally. Dr. Sack also advised he would not rule out rheumatoid arthritis, although that was not a definitive diagnosis. While Dr. Sack was willing to testify as to the history provided by claimant, he was not willing to definitively state whether claimant's symptoms were caused or contributed to by her work or by her weight lifting activities.

Dr. Sack referred claimant to Dr. Timothy Shaver, who confirmed the bilateral carpal tunnel syndrome diagnosis.

Claimant was referred by her attorney to Dr. Pedro Murati for an independent medical examination on June 3, 1997. Dr. Murati, who is board certified in rehabilitation and physical medicine, confirmed the diagnosis of probable bilateral carpal tunnel syndrome and bilateral wrist tendinitis. He provided recommendations for ongoing conservative treatment. Dr. Murati again examined claimant on December 17, 1997, for the purpose of providing a functional impairment under the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition. Dr. Murati opined that claimant had a 10 percent impairment to each upper extremity for the carpal tunnel syndrome, which converts to a 6 percent whole person impairment. Using the combined values chart, he found claimant to have a 12 percent whole person functional impairment.

Claimant was examined by Dr. Robert A. Rawcliffe, Jr., a member of the American Academy of Orthopedic Surgeons, on March 3, 1998, at the request of respondent. The history of injury provided was consistent with claimant's testimony. Dr. Rawcliffe also diagnosed mild carpal tunnel syndrome from claimant's activities with MCI. He assessed claimant a 5 percent functional impairment to each upper extremity, which converts to a 3 percent impairment of the whole body, which, when combined, results in a 6 percent whole body impairment.

At the time of the regular hearing, claimant continued working for First Data Corporation earning a comparable wage.

#### CONCLUSIONS OF LAW

In proceedings under the Workers Compensation Act, the burden of proof shall be on claimant to establish claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 1996 Supp. 44-501 and K.S.A. 1996 Supp. 44-508(g).

Claimant alleges accidental injury arising out of and in the course of her employment for the period October 1996 through December 19, 1996. While claimant provided evidence of an injury in May 1996, neither claimant nor her attorney ever requested that

the accident claim be amended to include those dates. However, claimant's testimony does show a continuing pattern of upper extremity trauma associated with her employment through her last day worked on December 19, 1996. The Appeals Board finds, based upon claimant's uncontradicted testimony, that claimant's injuries were the cumulative result of repetitive use trauma over a period of several months. Therefore, the appropriate date of accident in this case is December 19, 1996, pursuant to Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994).

K.S.A. 44-520a requires that written claim be submitted to respondent within 200 days of the date of accident or the date of last compensation. In this instance, as claimant has been found to have a date of accident of December 19, 1996, written claim submitted on April 18 or April 21, 1997, would be timely. In addition, respondent stipulated to the written claim for the December date of accident. Respondent, however, contends that no written claim was submitted for a May 1996 date of accident. As the Appeals Board has found that this is a microtrauma injury, suffered over a period of several months, the written claim for the December accident would satisfy the requirements of K.S.A. 44-520a.

Respondent further contends that claimant violated K.S.A. 44-520, which obligates that notice be given to the employer of an accident within 10 days of the accident. In this instance, claimant has testified to providing notice to respondent in May 1996. At that time, she was sent to Dr. Wilson for an examination and, if necessary, treatment, and provided to respondent Dr. Wilson's report, including certain restrictions. Claimant also discussed ongoing symptoms with two of her supervisors. Although claimant was not clear as to exactly when these conversations occurred, it does appear that it was around May 1996 or later that she had these discussions. Respondent provided no contradictory testimony. Uncontradicted evidence which is not improbable or unreasonable may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976). The Appeals Board finds that, as claimant's testimony regarding her conversations with her supervisors is uncontradicted, claimant did provide timely notice of accident as required by K.S.A. 44-520.

With regard to the nature and extent of claimant's injury, the Appeals Board finds that the Administrative Law Judge's Award sets out findings of fact and conclusions of law which are accurate and supported by the record. It is not necessary to repeat those herein. The Appeals Board, therefore, adopts the findings of the Administrative Law Judge as its own as if specifically set forth herein in awarding claimant a 6 percent permanent partial impairment of function to the body as a whole as a result of the injuries suffered through a series of injuries culminating on December 19, 1996.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated September 24, 1998, should be, and is hereby, affirmed.

Claimant is entitled to 24.9 weeks permanent partial disability at the rate of \$338 per week totaling \$8,416.20 for a 6 percent permanent partial general body disability, making a total award of \$8,416.20. As of this award, the entire amount is due and owing in one lump sum minus amounts previously paid.

In all other respects, the Award of the Administrative Law Judge is affirmed insofar as it does not contradict the findings expressed herein.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Joseph Seiwert, Wichita, KS  
Stephen J. Jones, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director